

(PCT Article 36 and Rule 70)

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/DE2004/002425

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-9 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. _____ as originally filed/furnished
- nos.* 2-16 _____ as amended (together with any statement) under Article 19
- nos.* 1 _____ received by this Authority on 16.09.2005 with letter of 15.09.2005
- nos.* _____ received by this Authority on _____
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1.	Statement		
	Novelty (N)	Claims <u>1-16</u>	YES
		Claims _____	NO
	Inventive step (IS)	Claims _____	YES
		Claims <u>1-16</u>	NO
	Industrial applicability (IA)	Claims <u>1-16</u>	YES
		Claims _____	NO
2.	Citations and explanations (Rule 70.7)		
	<p>The submitted amendments appear to meet the requirements of PCT Articles 19 and 34(2)(b).</p> <p>This report makes reference to the following document:</p> <p>D1: PATENT ABSTRACTS OF JAPAN vol. 1998, no. 02, 30 January 1998 & JP-A-09 279280, 28 October 1997 & WPI/Derwent Abstract, AN-1998-015156</p> <p>1. Independent product claim 1</p> <p>D1 discloses an alloy, example 150, table 7, page 9, the composition of which, <u>with the exception of the Zn content</u>, falls entirely into the scope of the claimed composition (D1, PAJ and WPI/Derwent Abstracts).</p> <p>The subject matter of claim 1 is therefore novel.</p> <p>However, it is not discernible from the description of the present application what problem is solved by this distinguishing feature. In fact, no technical effect is shown or mentioned with regard to the claimed Zn content.</p>		

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	<p>Furthermore, all the embodiments of the application (see table 1 on page 7) lie outside of the scope of protection of claim 1 owing to the Zn content.</p> <p>An inventive step therefore cannot be recognized for the subject matter of claim 1 (PCT Article 33(3)).</p> <p><u>Comments:</u></p> <p>It should be noted that the lower range limit of the element Ti lies within the impurity range. Ti is therefore regarded as optional.</p> <p>It should also be noted that exact disclosures, such as the Si content of 1.0 wt.% of example 150 in D1, have to be interpreted as a range around this value in view of fluctuations in reproducibility and measuring errors. The claimed lower limit of "> 1.0 wt% Si" cannot be regarded as a distinguishing feature in relation to example 150 in D1.</p> <p>2. Independent use claims 14 to 16</p> <p>2.1. Use claims 14 and 15 do not define particular uses because they claim a general use of a product that is defined by a method of production. Method features do not limit a claim unless unambiguously clear properties of the product can be derived as a result of the product having been produced by means of this method, which is not the case presently.</p>

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	<p>In light of the above arguments regarding claim 1, the subject matter of claims 14 and 15 is not regarded as inventive (PCT Article 33(3)).</p> <p>2.2. D1 discloses the use of the known alloy as a structural element (D1, WPI/Derwent Abstract). All the features of claim 16 are therefore known from D1.</p> <p>In light of the above arguments regarding claim 1, the subject matter of claim 16 is therefore not regarded as inventive (PCT Article 33(3)).</p> <p>It should be noted that the term "heat-resistant safety components" in claim 16 is very broad and therefore includes all types of structural elements.</p> <p>3. Dependent claims 2 to 13</p> <p>Dependent claims 2 to 13 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT requirements for inventive step (PCT Article 33(3)). The reasons for this are as follows:</p> <p>The same argument as that made with regard to claim 1 under point 1 also applies to claims 2 to 7 and 9 to 13 (PCT Article 33(3)).</p> <p>It should be noted that a person skilled in the art, on the basis of the technical, exemplary and exact disclosures for Si in D1, would seriously consider applying the technical teaching of the</p>

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	<p>known document in the overlapping range for Si, in particular, to the range claimed in claim 3 (D1, abstract; examples 1-187, tables 1-9).</p> <p>It is not clear from the application as a whole what problem could be solved by the distinguishing feature "at least 0.001 wt.% Gd" in claim 8 in relation to D1 (PCT Article 33(3)).</p> <p>4. As a final comment, it should be noted that dependent claim 11 contradicts claim 1 with regard to the Zn content (PCT Article 6).</p>